CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 268

STERLING P. HARRIS, ADMINISTRATOR OF THE ESTATE OF ANNA L. HARRIS, DECEASED, DEBTOR, PETITIONER,

vs.

ZION SAVINGS BANK AND TRUST COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 30, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

United States Circuit Court of Appeals

TENTH CIRCUIT

No. 2461.

STERLING P. HARRIS, as Administrator of the Estate of Anna L. Harris, deceased, APPELLANT,

vs.

ZION SAVINGS BANK AND TRUST COMPANY, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED DECEMBER 26, 1941.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 2461.

STERLING P. HARRIS, as Administrator of the Estate of Anna L. Harris, deceased, APPELLANT,

vs.

ZION SAVINGS BANK AND TRUST COMPANY, APPELLEE.

Statement of Points.

Comes now the appellant above named and makes the following statement of points upon which he intends to rely on the appeal of the above entitled matter, to-wit:

1. The court erred in vacating and setting aside the order of the said court reviving the said proceeding upon the petition of the administrator of Anna L. Harris, deceased.

2. The court erred in making an order directing that the *Admended* Petition of the said administrator for relief under subsection (s) of Section 75 of the Bankruptcy Act be denied.

3. The court erred in refusing to continue jurisdiction of the said court over the property of the deceased and in making an order dismissing the said proceeding in disregard of Section 8 of the Bankruptcy Act.

4. The court erred in holding that the jurisdiction of the Federal Court in said cause was dependent upon the statutes and rulings of the Supreme Court of the State of Utah and upon authority of the probate court to make an order authorizing the administrator to continue the said proceedings and further that the right of the said administrator to continue the proceedings pending at the time of the death of the said deceased was not absolute and unconditional.

Record Necessary for Consideration of Foregoing Points.

The said appellant believes that the entire record on appeal is necessary for the consideration of the points upon which he intends to rely, as hereinabove set forth.

Dated this 26th day of December, 1941.

J. D. SKEEN,
E. J. SKEEN,
Attorneys for Appellant.

Service of a copy of the foregoing Statement of Points and Designation of Record on appeal is accepted this 26th day of December, 1941.

THOMAS & THOMAS,
Attorney for Zion Savings Bank and Trust Company.

Filed December 29, 1941. Robert B. Cartwright, Clerk.

Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the March Term, 1942, of said Court, before Honorable Orie L. Phillips, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

Be It Remembered that heretofore, to-wit: On the 26th day of December, 1941, a transcript of the record pursuant to a notice of appeal, filed in the District Court of the United States for the District of Utah, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein Sterling P. Harris, as Administrator of the Estate of Anna L. Harris, deceased, was appellant, and Zion's Savings Bank and Trust Company was appellee, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following, to-wit:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE TILLMAN D. JOHNSON, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, PRESIDING IN THE FOLLOWING-ENTITLED CAUSE:

In the Matter of

STERLING P. HARRIS, as Administrator of the Estate of Anna L. Harris, deceased, DEBTOR AND APPELLANT.

No. 14824

Record on Appeal.

1 Comes now W. B. Wilson, Clerk of the above entitled Court, pursuant to the notice of appeal filed herein and the designation of record, and makes up for transmittal to the Clerk of the United States Circuit Court of Appeals of the Tenth Circuit the record on appeal as follows:

1. The petition of Anna L. Harris in usual form filed after approval December 20, 1937, with Schedules A and B attached.

Schedule A: Total Liabilities $8430.00.

Schedule B: Total Assets $32,500.00.

2. Meeting of creditors held before W. Douglas Allen, Conciliation Commissioner, February 10, 1938, and debtor made offer of composition and extension February 21, 1938.

3. Order abating proceeding:

The petition of Zion's Savings Bank and Trust Company for leave to foreclose mortgages having come on for further hearing, whereas it appears that said debtor, Anna L. Harris, has died since these proceedings were commenced.

Now, therefore, on motion of H. P. Thomas, one of counsel

for said petitioner, and good cause appearing, it is hereby ordered, adjudged and decreed that this cause do now abate.

Done in open court this 16th day of January, 1939.

TILLMAN D. JOHNSON, Judge.

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4. Petition for order reviving proceedings:

The petition of Sterling P. Harris respectfully shows to the court:

That the above named debtor died on or about the 23rd day of November; that by reason of the death of said debtor, the said proceeding was abated. Thereafter upon petition, the District Court of Salt Lake County, State of Utah made and entered an order appointing your petitioner administrator of the estate of the said deceased and your petitioner duly qualified and is now the duly qualified and acting administrator of said estate as is evidenced by a certified copy of said letters of administration attached hereto and filed herewith; that heretofore your petitioner, upon notice, applied to the District Court for Salt Lake County, State of Utah, for an order authorizing him to file a petition herein for the revival and reinstatement of said proceeding, a copy of the said order is attached hereto and made a part of this petition.

Your petitioner further shows to the court that after the death of the said deceased, Zion's Savings Bank and Trust Company, a creditor secured by mortgage, instituted a proceeding for the foreclosure of a mortgage upon the real estate scheduled herein and such proceedings have been had in said matter; that a decree of foreclosure was entered, an order of sale issued and a sale of said property made by the sheriff of Salt Lake County, State of Utah and the period of redemption in said estate is about to expire.

Wherefore, your petitioner prays for an order of this court reviving and reinstating said proceeding under the terms of Section 75 of the said Bankruptcy Act.

(Duly verified Feb. 9, 1940.)

Filed February 13, 1940.

STERLING P. HARRIS.

Order of State Probate Court authorizing administrator to apply to United States Court, attached to Petition for revival:

This cause came on for hearing upon the 10th day of February, 1940, on the petition of Sterling P. Harris, administrator of the estate of Anna L. Harris, deceased, praying for the relief hereinafter provided; notice of said petition and hearing having been previously served upon Zion's Savings Bank and Trust Company, a corporation; the administrator being represented by his attorney, E. J. Skeen and said bank by its attorneys, Thomas and Thomas; and the court having heard said petition and the arguments of counsel and it appearing and the court finds that there was pending in the United States District Court, District of Utah in February, 1938, a proceedings by and on behalf of said Anna L. Harris as debtor under and pursuant to Section 75 of the Bankruptcy Laws of the United States for relief of debtors, which upon the death of said deceased was thereupon abated by said United States Court in January, 1939; that on March 22, 1939, said administrator was appointed herein and thereafter said bank commenced suit in this court against said administrator to foreclose a mortgage upon farm lands in Salt Lake County, Utah, of said deceased joining others therein as defendants who claimed liens thereon and obtained a judgment of foreclosure July 17, 1939, and a certificate of sale to said lands at sheriff's sale August 15, 1939, for $5417.46, and the period of redemption from said sale will expire by the laws of the
3 State of Utah on February 15, 1940, and no redemption has been made and said proceedings in said United States Court have not been revived,

Now therefore, it is hereby ordered that said petition be granted and said administrator authorized to apply to said United States District Court for an order reviving and reinstating the said debtor relief proceedings, or instituting new proceeding in said court as advised.

And it is further ordered that said bank may on appeal herefrom to the Supreme Court of the State of Utah, stay the execution and enforcement of this order by giving bond as provided by law for such stay in the sum of $500.00 to the effect that it will pay, in the event this order is

sustained on appeal, all damages which said administrator may sustain by reason of the order having been stayed pending appeal and the administrator not having been allowed to make said application to said United States Court.

Done in open court at Salt Lake City, Utah, this 13th day of February, 1940.

P. C. EVANS, Judge.

And to the Petition for Revival was likewise attached a copy of Letters of Administration issued to Sterling P. Harris as follows:

Sterling P. Harris is hereby appointed administrator of the estate of Anna L. Harris, deceased.

By order of the court.

Witness William B. Korth, Clerk of said Court, with the seal thereof affixed this 30th day of March, A. D. 1939.

WILLIAM B. KORTH, Clerk.
By PARKER B. CADY, Deputy Clerk.

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5. Order Reviving proceedings:

It having been made to appear to the court from the verified petition of Sterling P. Harris that the above named debtor died on or about the 23rd day of November, 1938, and that the District Court for Salt Lake County, State of Utah, upon petition made and entered an order appointing Sterling P. Harris administrator of the estate of said deceased and letters of administration were issued to him, a copy of which has been filed in the office of the clerk of this court, and

It further appearing that the said District Court made and entered an order authorizing the said administrator to apply to this court for an order continuing the above entitled proceeding in this court, that Zion's Savings Bank and Trust Company filed Notice of Appeal from said order and executed and delivered a stay bond on said appeal and
4 good cause appearing therefor:

It is ordered that the above entitled proceeding be continued by Sterling P. Harris, as administrator of the estate of Anna L. Harris, deceased.

Dated this 15th day of February, 1940.

TILLMAN D. JOHNSON, Judge.

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6. Answer of Zion's Savings Bank and Trust Company to Petition of Sterling P. Harris.

Comes now Zion's Savings Bank and Trust Company, a corporation, and appearing specially for the purpose of having stricken and annulled the purported petition and order hereinafter mentioned, and not generally answers to the petition of Sterling P. Harris filed herein February 13, 1940, praying the court to revive and reinstate these proceedings and for answer thereto alleges:

1. Admits the allegations of said petition, except it denies there is attached thereto any copy of petitioner's letters of administration or any copy of an order of said State Court authorizing said administrator to petition this court herein to revive these proceedings; and alleges that said last mentioned order was stayed by its terms by appeal to the Supreme Court of Utah as hereinafter alleged:

Further, said bank alleges:

2. That these proceedings were instituted in the month of January, 1938, by Anna L. Harris, also known as Annie L. Harris, as debtor, pursuant to Section 75 of the Bankruptcy Act of the United States for the relief of debtors; that said debtor thereafter died and in January, 1940, an order was given and made herein that these proceedings should and thereby did abate and the same have not been revived.

3. That said Sterling P. Harris thereafter became and was appointed administrator of the estate of said deceased debtor by order of the District Court, Salt Lake County, Utah, Probate Division, given and made the 22nd day of March, 1939; that no application to revive the proceedings herein was made until the 10th day of February, 1940, when said administrator petitioned said Probate Court for

authority in that behalf, and on the 13th day of February, 1940, an order was given and made by said Probate Court granting said petition and authorizing the administrator to apply to this court for an order reviving these proceedings or to institute new proceedings in this court as advised, but said order expressly provides therein that said bank might on appeal therefrom to the Supreme Court of Utah, stay the execution and enforcement thereof by giving bond on appeal in the sum of $500.00 for such stay.

4. That on said 13th day of February, 1940, and immediately upon the entry of said order and by authority thereof, said Bank at once did give notice of appeal and did appeal to said Supreme Court and also thereupon
4 at once did give bond for the stay of said order as therein provided and the same thereupon was and now is thereby stayed and the administrator is wholly without any order or authority of said Probate Court to apply to or petition this court. That the order of the Probate Court aforesaid is hereto attached, maked Exhibit "A", hereby referred to and made a part hereof. (Same as attached to petition of administrator to revive proceedings.)

5. That notwithstanding said order provides the same shall be stayed by the appeal and bond aforesaid, but in disregard and in violation thereof, and after the same had been and was stayed, said administrator thereafter and later in said day, the 13th day of February, 1940, aforesaid, filed said petition herein and petitioned this court for a revivor of these proceedings as aforesaid, and on the 15th day of February, 1940, in further violation and disregard of said order, procured a purported order to be given and made by this court herein purporting to authorize said administrator as such to continue and revive these proceedings on behalf of the estate of said deceased. That a copy of said last-mentioned order is hereto attached, marked Exhibit "B", hereby referred to and made a part hereof. (Same as Order, Paragraph 5).

6. That by reason of the premises said administrator was and is without any order or authority to petition this court for relief, and without authority to make and file said petition and the same is wholly unauthorized, null and void, and this court is without jurisdiction of the subject matter

thereof and without jurisdiction over said administrator, and without jurisdiction to make and enter the purported order thereon aforesaid, and the same is null and void, and said petition and order should be annulled and held for naught and stricken out.

Wherefore, having answered, said bank respectfully prays that said petition and order be annulled and held for naught and stricken out.

H. P. THOMAS, Attorney for
Zion's Savings Bank and
Trust Company.

(Duly verified.)
Filed March 14, 1940.

Attached to said answer was notice that order of the said court was stayed on appeal by Zion's Savings Bank & Trust Company, giving bond and said cause was then in the Supreme Court of the State of Utah.

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7. On September 18, 1940, Sterling P. Harris, as administrator, deposited with the Clerk of the District Court, an amended petition for relief under subsection (s) of Section 75 of the Bankruptcy Act, said petition was marked: "received Sept. 18, 1940, at 10:30 A. M. V. P. Ahlstrom, Deputy." Said Amended Petition is as follows:

6 The petition of Sterling P. Harris respectfully shows to the Court:

That heretofore P. Harris filed her petition herein praying for relief under Section 75 of the Bankruptcy Law as amended March 3, 1933, and the amendments thereto; that said matter was referred to the Honorable W. Douglas Allen, Conciliation Commissioner for Salt Lake County, State of Utah; that said Conciliation Commissioner caused meetings of creditors to be held, as provided by law, and said debtor, during the course of said proceedings made a bona fide offer of composition and extension to her creditors and conducted negotiations for the composition and settlement of her debts; that said negotiations were unsuccessful and said petitioner failed to obtain the acceptance of the majority in number and amount of her creditors whose claims are affected by a composition and extension proposal.

That said debtor died on the 23rd day of November, 1938, and your petitioner is the duly appointed, qualified and acting administrator of her estate.

Your petitioner feels aggrieved by reason thereof and on behalf of said debtor is desirous of securing the advantages and benefits of subsection (s) of the said Section 75 as amended by the Act of August 28, 1935; that your petitioner has paid all costs incurred herein and has at all times complied with the orders of the court and the Conciliation Commissioner.

Wherefore, your petitioner prays that said estate be adjudged a bankrupt and that it be given the advantages of the said subsection (s) of the said Section 75 of the Bankruptcy Act; that its property be appraised; that its exemptions be set aside; that rental be fixed; that all proceedings against it be stayed and that your petitioner be continued in possession of all the property of said estate under the supervision and the control of the court.

STERLING P. HARRIS, Petitioner.

(Duly verified September 17, 1940.)

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8. Order that petition be not filed:

It appearing that from the opinion of the Supreme Court of the State of Utah in the case of Zions Bank and Trust Company, appellant, vs. Sterling P. Harris, as Administrator of the Estate of Anna L. Harris, deceased, respondent, that the administrator is without authority under the laws of the State of Utah to proceed in bankruptcy.

It is ordered that the amended petition under the Act of August 28, 1935, this day presented by said administrator be not filed at this time, and

It is hereby ordered that Sterling P. Harris, as administrator, show cause on Saturday, the 28th day of September, 1940, why said petition heretofore filed under Section 75 of the Bankruptcy Act should not be dismissed.

Dated this 18th day of September, 1940.

TILLMAN D. JOHNSON, Judge.

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7 9. Amended Motion to Strike:

Comes now Zion's Savings Bank and Trust Company, a corporation, and moves the court as follows:

1. To strike the petition of Sterling P. Harris, administrator of Anna L. Harris, deceased, praying to revive and reinstate these proceedings herein; said petition having been filed February 13, 1940.

2. To strike the amended petition of said administrator praying to be adjudged a bankrupt and for other relief pursuant to Subsection "s" of Section 75 of the Bankruptcy Act; said amended petition having been filed September 18, 1940.

3. To dismiss and terminate these proceedings.

All upon the grounds (1) that each of said petitions was filed without any order or authorization in that behalf of the state probate court, the District Court of Salt Lake County, Utah, which appointed said administrator and wherein the estate of said deceased was and is pending, and (2) that said administrator is and at all times was without right, power or authority under the laws of the State of Utah to file said petitions or otherwise enter into bankruptcy, and said petitions and each of them were and are wholly void.

This motion is made and based upon the files and records herein and the amended affidavit of H. P. Thomas on behalf of said bank herewith served and filed in support hereof.

H. P. Thomas & D. H. Thomas,
Attorneys for Zion's Savings Bank and Trust Company.

Filed August 29, 1941.

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10. Amended Affidavit Supporting Motion of Zion's Savings Bank and Trust Company:

H. P. Thomas, being first duly sworn, on oath deposes and says that he is one of counsel for Zion's Savings Bank and Trust Company, a corporation, and makes this affidavit in support of the amended motion of said bank (1) to strike the petition of Sterling P. Harris, administrator of

Anna L. Harris, deceased, praying for an order reviving and reinstating these proceedings herein, (2) to strike the amended petition of said administrator filed herein September 18, 1940, praying relief under Subsection "s" of Section 75 of the Bankruptcy Act, and (3) to dismiss and terminate these proceedings.

1. That said Anna L. Harris in her lifetime on December 18, 1937, commenced these proceedings and filed herein her petition for relief as a farmer-debtor under Section 75 of the Bankruptcy Act; that she thereafter died November 23, 1938, and these proceedings were thereupon abated by order of this court made and entered herein January 16, 1939.

8 2. Thereafter, March 22, 1939, said Sterling P. Harris was duly appointed and qualified as administrator of the estate of said Anna L. Harris, deceased, by order of the district court of Salt Lake County, Utah, Probate Division.

3. That thereafter said bank commenced action against said administrator in said state court to foreclose a mortgage on real property of said deceased; that it obtained a judgment and decree of foreclosure therein July 17, 1939, and became the purchaser at sheriff's sale and received the sheriff's certificate of sale to said property August 15, 1939, for $5417.46, subject to any redemption thereof within six months under and pursuant to the state law of Utah; that said period of redemption expired February 15, 1940, and no redemption having been made, the bank's title thereupon became absolute and it received a sheriff's deed to said property evidencing such title.

4. That two days before the period of redemption expired by state law as aforesaid, said administrator on February 13, 1941, obtained an order of said state probate court purporting to authorize him as such administrator to revive and reinstate these debtor proceedings herein or institute new ones as advised, which order further provided that the bank might stay the same and the execution and enforcement thereof on appeal to the State Supreme Court of Utah by giving bond as therein provided.

5. That on said 13th day of February, 1940, immediately

upon the entry of said order and by authority thereof and of the state law in such cases made and provided, said bank at once duly gave and filed notice of appeal and appealed to said State Supreme Court and also thereupon at once gave proper bond for the stay of said order as therein provided and as provided by law, and the same and the execution and enforcement thereof thereby became and was stayed and said order was wholly without force or effect whatever.

6. That notwithstanding said order was immediately and forthwith stayed on appeal as aforesaid, said administrator later in said day and after the same had been stayed and rendered of no legal force or effect, filed herein his petition aforesaid to revive and reinstate these proceedings. That on said appeal by said bank to said State Supreme Court the order of the State Probate Court aforesaid was duly reversed, annulled and set aside September 13, 1940 (In re Harris' Estate, Zion's Savings Bank and Trust Company vs. Harris, 105 P. (2d) 461. Certiorari granted, Harris vs. Zion's Savings Bank and Trust Company, 61 S. Ct. 611; writ of certiorari dismissed, 61 S. Ct. 840). That thereafter in pursuance of said reversal said probate court on the 25th day of August, 1941, duly made and entered its order annulling, vacating and setting aside and adjudging to be void and of no force or effect whatever its said order of February 13, 1940, purporting to authorize said administrator to proceed in said United States court.

7. That meanwhile said administrator filed herein September 18, 1940, his purported amended petition praying for relief and to be adjudicated a bankrupt under
9 Subsection "S" of Section 75 of the Bankruptcy Act aforesaid.

8. That said probate court wherein he was appointed never authorized, and never made any order authorizing, said administrator to file herein said petition to revive or reinstate these proceedings, or to file herein said amended petition under subsection "s" of Section 75 of the Bankruptcy Act, but both petitions were made and filed by said administrator without authorization of said probate court as required by General Order 50 (9) of the General Orders of the Supreme Court of the United States, and without right or authority under the laws of the State of Utah in re-

gard to administrators and executors, and were and are void and of no force or effect whatever and should be stricken out and these proceedings dismissed and terminated.

H. P. THOMAS.

Filed August 29, 1941.

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11. Findings of Fact and Conclusions of Law for Order Dismissing Administrator's Petitions:

This cause came on for hearing upon the petition of Sterling P. Harris, administrator of Anna L. Harris, deceased debtor, filed February 13, 1940, praying to revive the proceedings which were pending herein under Section 75 of the Bankruptcy Act upon the death of said debtor; upon the order of this court to show cause why said petition should not be dismissed; upon the petition of said administrator presented to the clerk of this court September 18, 1940, praying that said estate be adjudged bankrupt and allowed the advantages of subsection "s" of said Section 75, and also upon the amended motion of Zion's Savings Bank and Trust Company to strike said petitions and dismiss; J. D. Skeen, Esq. appearing for said administrator and H. P. Thomas, Esq. for said bank, and the said cause was heard and argued by counsel for the debtor and said bank and duly considered by the court, and the court being fully advised makes the following:

Finding of Fact.

1. That said Anna L. Harris in her lifetime commenced these proceedings on December 18, 1937, by filing her petition for relief as a farmer-debtor under said Section 75; that she died thereafter November 23, 1938, without effecting a composition or extension herein or amending her petition or petitioning the court for relief under subsection "s" of Section 75; that by order of this court these proceedings were then abated January 16, 1939, and on March 30, 1939, said administrator was appointed and qualified as such by the appointment of the District Court, Probate Division, Salt Lake County, Utah, made on said day.

2. That said bank thereafter commenced suit in said state court against said administrator to foreclose a mort-

gage on real estate of said deceased debtor and ob-
10 tained a judgment of foreclosure therein July 17, 1939; received the sheriff's certificate of sale of said property on foreclosure August 15, 1939, for $5417.46, subject to redemption within six months pursuant to the state law of Utah, and no redemption being made within said time, thereafter received a sheriff's deed to said property.

3. That February 13, 1940, two days before said period of redemption expired by said state law, said administrator obtained an order of said probate court purporting to authorize him as the personal representative of said deceased debtor to revive these proceedings. That said order also provided that the execution and enforcement thereof might be stayed on appeal to the Utah Supreme Court by said bank appealing and giving bond as therein provided, pursuant to which on said day, February 13, 1940, and immediately upon the entry of said order, said bank appealed to said Supreme Court therefrom and gave bond to stay, and stayed, said order on appeal as therein and as by law provided.

4. That later in said day, said February 13, 1940, and after said order had been appealed and was stayed as aforesaid, the administrator filed herein his petition to revive these proceedings under said Section 75, and thereafter, February 15, 1940, this court made and entered its order herein ordering these proceedings to be continued by said administrator.

5. That September 13, 1940, the order of said probate court was, on appeal, duly reversed, annulled and set aside (In Re Harris' Estate, Zion's Savings Bank and Trust Company vs. Harris, 105 P. (2d) 461. Certiorari granted, Harris vs. Zion's Savings Bank and Trust Company, 61 S. Ct. 611; writ of certiorari dismissed, 61 S. Ct. 840.) Thereafter, August 25, 1941, pursuant to such reversal, said probate court duly entered its order annulling, vacating and setting aside the same and adjudging it to be void and of no force or effect whatever.

6. That September 18, 1940, said administrator presented to the clerk of this court to be filed his said amended petition praying to be adjudged bankrupt under and by subsection "s" of Section 75 and for the benefits and advantages there-

of, whereupon this court made and entered its order on said day ordering that said petition not be filed at said time, (and the same was not and has not been filed or ordered filed) and further ordering said administrator to show cause why his said petition to revive these proceedings filed February 13, 1940, as aforesaid should not be dismissed. That no order of said state probate court was ever made or entered authorizing, directing or permitting said administrator to present or file in this court his amended petition for relief under said subsection "s", but said amended petition was offered and presented to be filed herein without the order or authority of said probate court. That no order or authority of said probate court authorizing the administrator to petition or apply for relief or otherwise proceed herein was ever made, given or had except said order of February 13, 1940, purporting to authorize him to petition to revive these proceedings, which order was reversed and annulled on appeal as aforesaid, and the administrator is and at all times was wholly without the order or authority of said probate court to proceed herein whatever.

11 From the foregoing Findings of fact the court now makes the following:

Conclusions of Law.

1. That being without any order or authority of the State probate court so to do, said administrator was without right or authority to petition this court to reinstate and continue these proceedings under said Section 75 or to petition this court for relief under subsection "s" thereof. That by the state law of Utah as determined by the Supreme Court of said state in the matter of said Anna L. Harris, deceased, as aforesaid, the administrator is without power to petition and the probate court is without power or jurisdiction to authorize him to petition this court for relief, and this court was without power or jurisdiction to accept or receive his petition.

2. That therefore the order of this court given and made herein February 15, 1940, ordering these proceedings to be continued by said administrator should be vacated, annulled and set aside and held for naught, and the petition of said administrator theretofore filed herein February 13, 1940,

praying to revive and reinstate these proceedings under said Section 75 should be dismissed.

3. That the amended petition of said administrator praying that the estate of said deceased be adjudged bankrupt and for other relief pursuant to subsection "s" of said Section 75, which petition was presented to the clerk of this court by said administrator September 18, 1940, but not filed, was properly refused for filing and should not be received or filed herein.

4. That said amended motion of Zion's Savings Bank and Trust Company to strike the petition of said administrator praying to revive and reinstate these proceedings under said Section 75 and to strike the amended petition of said administrator aforesaid and to dismiss these proceedings should be denied.

Let the order of the court be made and entered accordingly.

Dated at Salt Lake City, Utah, this 30th day of September, 1941.

TILLMAN D. JOHNSON, Judge.

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12. Order Dismissing Administrator's Petitions:

This cause came on to be heard at this term and was argued by counsel for Sterling P. Harris, administrator of the estate of said Anna L. Harris, deceased debtor, and by counsel for Zion's Savings Bank and Trust Company, and now upon consideration thereof it is hereby ordered, adjudged and decreed:

1. That the order of this court given and made herein February 15, 1940, ordering these proceedings to be continued by said administrator be and is hereby vacated, annulled and set aside and held for naught, and the petition of said administrator theretofore filed herein February 13, 1940, praying to revive and reinstate these proceedings under Section 75 of the Bankruptcy Act be and is hereby dismissed.

12 2. That the amended petition of said administrator praying that the estate of said deceased be adjudged bankrupt and for other relief pursuant to subsection "s"

of Section 75 of the Bankruptcy Act, which petition was presented to the clerk of this court by said administrator September 18, 1940, but not filed, be and is hereby ordered not to be filed herein.

3. That the amended motion of Zion's Savings Bank and Trust Company to strike the petition of said administrator to revive and reinstate these proceedings under Section 75, also to strike said amended petition ordered not filed as above, and also to dismiss these proceedings, be and is hereby denied.

Dated at Salt Lake City, Utah, this 30th day of September, 1941.

TILLMAN D. JOHNSON, Judge.

13. Stipulation Regarding Order of Probate Court Denying Administrator Authority to Appeal Herein:

It is hereby stipulated by and between appellant Sterling P. Harris, as administrator of said deceased, and appellee Zion's Savings Bank and Trust Company as follows:

1. That after the entry of this court's Order Dismissing Administrator's petitions given and made September 30, 1941, said administrator on October 10, 1941, petitioned the District Court, Probate Division, Salt Lake County, Utah, for an order authorizing him to appeal from and prosecute proceedings herein to review said Order Dismissing Administrator's Petitions.

2. That said Zion's Savings Bank and Trust Company duly filed in said probate court its answer and protest to said petition setting forth haec verba therein said order of this court dismissing administrator's petitions and also the findings of fact and conclusions of law supporting the same and alleging in said answer that a previous order of said probate court (mentioned in said findings herein) made February 13, 1940, purporting to authorize the administrator as the representative of said deceased to revive these debtor proceedings herein, had been stayed on appeal by said bank and reversed and set aside by the Supreme Court of Utah, certiorari dismissed by the United States Supreme Court, and further alleging that such reversal was res judicata of

the administrator's application for authority to appeal herein and that the probate court was without power and jurisdiction to authorize the administrator to resort to the United States District Court to take or attempt proceedings in Bankruptcy under Section 75 of the Bankruptcy Act, including proceedings for appeal or review of said order of the bankruptcy court herein.

3. That upon the hearing of the petition and answer and protest aforesaid the probate court made and entered its order the 17th of October, 1941, ordering, adjudging and decreeing as follows:

A. That said administrator not be authorized or directed to appeal from or institute proceedings to review this
13 court's Order Dismissing Administrator's Petitions and that his application in that behalf be dismissed and denied.

B. That the judgment of the Supreme Court of Utah reversing and setting aside the order of said probate court purporting to authorize said administrator to revive these proceedings herein was res judicata in said probate court and cause.

Dated November 1, 1941.

J. D. SKEEN, E. J. SKEEN,
Attorneys for Sterling P. Harris, Administrator of Anna L. Harris, deceased.
H. P. AND D. H. THOMAS,
Attorneys for Zion's Savings Bank and Trust Company.

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14. Notice of Appeal:

Notice is hereby given that Sterling P. Harris, administrator of the estate of Anna L. Harris, deceased, hereby appeals to the United States Circuit Court of Appeals for the Tenth Circuit from the order of the above entitled court dated September 30, 1941, setting aside and vacating the order reviving the above entitled proceedings, denying the petition of the administrator of said estate to be adjudged a bankrupt, pursuant to the provisions of subsection (s) of

Section 75 of the Bankruptcy Act and refusing to permit the administrator of the said estate of Anna L. Harris, deceased, to pursue the proceedings pending at the time of the death of the said deceased for relief under Section 75 of the Bankruptcy Act. This appeal is taken on questions of law and fact.

Dated this 23rd day of October, 1941.

J. D. SKEEN, E. J. SKEEN,
Attorneys for Sterling P. Harris, Administrator.

[Appellant's statement of points relied on, filed in the district court, is identical with the statement which appears at page 1.]

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14 It is stipulated that the foregoing record on appeal, together with Notice of Appeal and Statement of Points may be certified and transmitted by the Clerk of the United States District Court for the District of Utah to the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit and that the same shall constitute the record on appeal in said cause.

It is further stipulated that the appellee does not waive but expressly reserves the right to assert that this appeal is attempted by appellant administrator without authorization of the State probate court of his appointment and wherein the matter of the estate of said Anna L. Harris, deceased, is still pending.

Dated this 16th day of December, 1941.

J. D. SKEEN, E. J. SKEEN,
Attorneys for Appellant.

THOMAS & THOMAS,
Attorneys for Appellee.

Filed in United States District Court December 17, 1941.

Bond on appeal in the sum of $250.00 filed October 23, 1941.

Order Extending Time.

17 It having been made to appear to the satisfaction of the court that the above named debtor has filed Notice of Appeal of the above entitled cause, together with a bond on appeal as required by the rules of this court, and that he has designated the contents of the record on appeal and it appearing that further time is required to complete the record for filing in this case and for the docketing of said cause,

It is ordered that the time for filing the record on appeal and docketing the said action be, and it is hereby enlarged and extended up to and including the 27th day of December, 1941.

Dated this 13th day of November, 1941.

ORIE L. PHILLIPS,
Circuit Judge.

Filed in United States District Court November 15, 1941.

Certificate of Clerk.

United States of America, District of Utah, ss.

18 I, W. B. Wilson, Clerk of the United States District Court for the District of Utah, do hereby certify that the foregoing pages numbered from 1 to 14, inclusive, is a true and correct copy of the original abstract of record on appeal as prepared and filed by the appellant on December 17, 1941, and that pages numbered from 15 to 17, inclusive, are true and correct copies of the original documents now remaining among the records of said Court in my office, in case numbered 14824, In the Matter of Sterling P. Harris as Administrator of the Estate of Anna L. Harris, deceased, Debtor.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City, Utah, this 24th day of December, 1941, and the 166th year of the Independence of the United States of America.

(Seal) W. B. WILSON, Clerk.

Filed December 26, 1941. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz.:

Order of Submission.

Ninth Day, March Term, Friday, April 17th, A. D. 1942. Before Honorable Orie L. Phillips, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard and was argued by counsel, J. D. Skeen, Esquire, appearing for appellant, Hadlong P. Thomas, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

Opinion.

[May 5, 1942.]

J. D. Skeen (E. J. Skeen was with him on the brief) for Appellant.

Hadlong P. Thomas (Thomas & Thomas and Daniel H. Thomas were with him on the brief) for Appellee.

Before Phillips, Huxman and Murrah, Circuit Judges.

Huxman, Circuit Judge, delivered the opinion of the court.

During her lifetime, Anna L. Harris filed a petition in the United States District Court for the State of Utah, praying relief under Section 75 of the Bankruptcy Act, subsections (a) to (r), inclusive. The matter was referred to a conciliation commissioner, an offer of composition and extension was made, but before it was either accepted or rejected, Anna L. Harris died. Thereupon the federal court entered an order abating the pending proceeding. Thereafter, Sterling P. Harris, appellant herein, having been appointed administrator of her estate, filed a petition for an order reviving the proceeding in the federal court. The petition had attached to it an order of the Probate Court authorizing the administrator to apply for a revival of the proceeding and also authorizing him to institute a new proceeding in the federal court under Section 75. Appellee, the Zion's Savings Bank and Trust Company, resisted the

petition in the Probate Court. It appealed to the Supreme Court of Utah from the order of the Probate Court granting authority to proceed in the Federal Court. After the revival of the proceedings in the Federal Court, the administrator filed an amended petition seeking relief under subsection (s) of Section 75 of the Act. The matters were kept in abeyance in the Federal Court pending a decision of the Supreme Court of Utah on the appeal. The Utah Supreme Court reversed the order of the Probate Court granting the administrator authority to proceed in the Federal Court. Application was made for a writ of certiorari to the Supreme Court of the United States. The writ was issued and the matter was set down for argument. After argument, the court dismissed the application for the writ. Harris, Administrator, v. Zion's Savings Bank & Trust Co., 313 U. S. 541.

Thereupon the Zion's Savings Bank and Trust Company filed an amended motion to strike the petition to revive and the amended petition to proceed under subsection (s). The motion was sustained and judgment was entered accordingly. The administrator has appealed.

The Supreme Court of Utah held that the Probate Court was a creature of the law and that the source of its power and the power of the administrator must be found in the probate code. It held that the administrator could not be authorized by the Probate Court to resort to the Federal Court to revive proceedings which were pending there under Section 75 at the time of decedent's death. In re Harris' estate, 99 Utah 464, 105 P. 2d 461.

Notwithstanding the holding of the Utah court, appellant contends that power of the administrator to maintain a rehabilitation proceeding under Section 75 (s) is conferred by that part of Subsection (r) which provide that the term "farmer" not only includes one who is primarily bona fide personally engaged in producing products of the soil, but also the "personal representatives of a deceased farmer." We doubt whether such a broad construction can be sustained. Federal courts have no probate jurisdiction. Power to administer estates resides entirely with the states. Probate courts and administrators are the creatures of state

law. They can exercise only such powers as are given to them by their creator. To hold that a federal law could endow an administrator with power denied him by his creator would in effect constitute an amendment of the state law which gave him birth.

It is argued that the proceeding was pending in the bankruptcy court at the time of the death of Mrs. Harris. That Section 8 of the General Bankruptcy Law provides that death of a bankrupt does not abate the proceeding nor divest a bankruptcy court of jurisdiction of the bankrupt's property. It is contended that if on the death of a bankrupt, jurisdiction continues in a general bankruptcy proceeding, there is no reason why it should not continue under the same conditions in a proceeding under Section 75. But there are many differences in the two proceedings. In a general bankruptcy, the object is to liquidate one's debts and secure a discharge therefrom. The bankrupt upon filing his petition surrenders his property. The title thereto passes to the trustee, and thereafter the bankrupt has no proprietary interest therein. 11 U. S. C. A. 110. Neither can he thereafter stop the proceedings and go hence with his property to do with as he pleases. The object sought in a proceeding under Section 75 is not primarily liquidation, but rehabilitation. It affords a breathing spell during which the farmer continues operations and attempts to get back on his feet. While under Subsection (n) he and his property are subject to the exclusive jurisdiction of the court upon the filing of a petition, he is not, however, divested of his ownership or control thereof. He may dismiss the proceedings the next day, or take no further steps, and use his property in any lawful manner he may wish. If he should die, his property descends to his heirs according to the laws of the state. It is doubtful if the rehabilitation feature of the Act can come into play in an estate upon the death of a distressed farmer. His opportunity for rehabilitation ends with his death. Title to his property, both personal and real, under Utah law vests immediately in the heirs. In re Harris' Estate, supra. Whether his heirs would be entitled to the benefits of the Act would depend, first, upon whether they were farmers within the meaning of the Act, and next, upon whether they were distressed. Suppose they desired

to pay the claim against the property and then possess it, could the administrator revive the pending proceedings and operate it under the provisions of the Act for three years?

But it is not necessary to the decision of this case that we explore and define the ultimate limits and meaning of this part of Subsection (s). Subsection 9 of General Order in Bankruptcy 50, promulgated by the Supreme Court, requires a personal representative of a deceased farmer desiring to proceed under Section 75 to attach to his petition, among other things, a copy of an order of the Probate Court authorizing him to file a petition. This requirement is mandatory. The bankruptcy court has no authority to entertain the personal representative's petition unless he attaches the authorization of the Probate Court empowering him to proceed. Lemm v Northern California Natl. Bank, 9 Cir., 93 F. 2d 709.

In the argument before this court, appellant took the position that Section 9 of General Order 50 was unconstitutional because it was in derogation of the plain provisions of that part of Subsection (s) which recognized a personal representative of a deceased farmer as entitled to the benefits of the Act. A Circuit Court of Appeals will not declare unconstitutional an order of the Supreme Court of the United States promulgated under express statutory authority of law. That must be done, if it all, by the Supreme Court. In re Bronx Ice Cream Co., 2 Cir., 66 F. 2d 620.

Furthermore, we feel that by Section 9 of General Order 50, the Supreme Court has construed Subsection (r) to mean that a personal representative of a deceased may come in and seek to effect a composition or extension of the debts of the deceased under the provisions of Section 75 when such power resides in him by virtue of the state law, and when he files with his petition an order of the Probate Court authorizing him to proceed.

The decision of the trial court is Affirmed.

Judgment.

Nineteenth Day, March Term, Tuesday, May 5th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; and that Zion's Savings Bank and Trust Company, appellee, have and recover of and from Sterling P. Harris, as Administrator of the Estate of Anna L. Harris, deceased, appellant, its costs herein.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains a full, true and complete copy of the transcript of the record from the District Court of the United States for the District of Utah, and full, true and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 2461, wherein Sterling P. Harris, as Administrator of the Estate of Anna L. Harris, deceased, was appellant, and Zion's Savings Bank and Trust Company was appellee, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 2nd day of June, A. D. 1942.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 268

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.